(2012) 02 MAD CK 0047

In the Madras High Court

Case No : Writ Petition No. 21184 of 2011 and M.P. No. 1 of 2011

M/s. Pacificorp (HK) Limited — APPELLANT

Vs

The Commissioner of Customs (Airportand Air Cargo Complex), Meenambakkam, Chennai-600027, The International Airport Authority of India and M/s. Skyway Corporation Link — RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111
Foreign Trade (Development and Regulation) Act, 1992 — Section 11(1)
Sales of Goods Act, 1930 — Section 45, 46

Citation : (2012) 281 ELT 522

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : B. Satish Sundar, for the Appellant; P. Mahadevan (R1), Central Government Standing Counsel and Mr. A. Abrar Ahmed (R3), for the Respondent

Judgement

M. Jaichandren

1. Heard the learned counsel for the petitioner and the learned counsels appearing for the respondents. It has been stated that the petitioner

company, which is operating from Hongkong, is an importer and exporter of various commodities, such as imitation stones, artificial stones and

other such products. During the course of its business the petitioner had shipped one consignment of Imitation Glass stones, in 39 cartons, weighing

854 kilograms. The consignment was sent on the orders placed by M/s.Sky Way Corporation, Jaipur. The said goods had arrived at the Air

Cargo Complex, Meenambakkam, Chennai.

2. However, the importer, namely, M/s.Sky Way Corporation, Jaipur, had refused

to clear and take delivery of the goods, and as the cost of the

goods had not been paid, the petitioner had requested the respondents to permit the re-export/re-shipment of the goods. However, as the

respondents had not considered the request made by the petitioner, the present writ petition has been filed before this Court, under Article 226 of

the Constitution of India.

3. The learned counsel appearing on behalf of the petitioner had submitted that the petitioner continues to be the owner of the goods in question,

when the importer or the consignee concerned abandons the goods imported on their behalf, as held by the Supreme Court, in Union of India Vs.

Sampath Raj Dugar, reported in 1992(58) ELT 163 (SC).

4. It had also been stated that the seller of the goods is deemed to be an `unpaid seller'', as per the terms of Section 45 of the Sale Goods Act,

1930, when the whole of the price had not been paid or tendered. u/s 46 of the said Act it is stated that, notwithstanding the fact that the property

in the goods may have passed to the buyer, the unpaid seller of the goods has a lien on the goods concerned, for the price, by implication of law.

As such, the petitioner, who is an unpaid seller, has the right in respect of the goods in question. Therefore, he has the right to make a request to

the respondents to re-ship or to re-export the goods in question. As per the decision of the Delhi High Court, in Agrim Sampada Ltd. Vs. Union of

India, reported in 2004 (168) ELT 15 (Del), the title in respect of the goods abandoned by the importer would vest with the petitioner.

5. In the counter affidavit filed on behalf of the first respondent it has been stated that the importer has not abandoned the goods, even though he

had chosen not to file the bill of entry, in order to escape from the clutches of law and in order to avoid detection of its mode of operation by the

investigating agency. During the examination, it had been found that the goods had been mis-declared as imitation stones, in order to evade

payment of a higher duty. Therefore, a show cause notice had been issued to the importer for the violation of the provisions of the Customs Act,

1962. Hence, the request of the petitioner for re-shipment or re-export of the goods would not arise.

6. In fact, a show cause notice, dated 8.7.2011, had been issued to M/s.Sky Way Corporation, Jaipur, and certain others, proposing confiscation

of the goods, u/s 111(d) of the Customs Act, 1962, read with Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, as

the goods in question are under investigation by the authorities concerned. While so, the request of the petitioner cannot be considered, at this

stage.

7. In the counter affidavit filed on behalf of the third respondent it has been stated that the amount due to be paid to the petitioner, by the third

respondent, for the goods in question, could not be paid due to severe financial constraints. Therefore, the goods could not be cleared and taken

by the third respondent. It had also been stated that the value of the imported goods had not been paid, till date. As such, the petitioner continues

to be the owner of the goods in question, as the third respondent, being the importer of the goods, had abandoned the goods in question. In view

of the above contentions, raised on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, it is clear that the

petitioner has the right to request the respondents for the necessary permission, to re-ship or to re-export the goods in question. Further, as the

third respondent does not have any serious objection for the re-export of the goods in question, the respondents are directed to permit the

petitioner to re-export the goods in question, as prayed for by the petitioner, in the present writ petition. However, it is made clear that it is open to

the authorities concerned, to pass an appropriate order, with the view to initiate the necessary action against the parties concerned, if it is deemed

to be necessary, in respect of the alleged infringement of the relevant provisions of law, if any, as expeditiously as possible, as the petitioner, has

been incurring heavy demurrage charges. Further, it is made clear that the respondents are directed to consider the request of the petitioner, for the

re-shipment and re-export of the goods in question, in view of the above observations made by this Court, in this order, unless there are other legal

impediments, for granting such permission, as prayed for by the petitioner. The writ petition is ordered accordingly. No costs. Consequently,

connected miscellaneous petition is closed.